

Minutes From Food Safety Conference Call April 15, 2011

1. Update from the Retail Food Safety Advisory Council meeting (RFSAC) – Larry Holbert

The meeting of the RFSAC was held on Tuesday April 12, 2011 and the next meeting is scheduled for August 9, 2011.

New Member Frank Kellogg (Boards of Health), Health Commissioner, Lake County Health Department was introduced.

The following individuals were reappointed to the council: Peter Schade, Health Commissioner, Erie County Health Department (Boards of Health) Dennis Hecker, VP Quality Assurance, Wendy's International (Food Service Operations) Gale Prince, Private Consultant (Retail Food Establishments).

The council discussed releasing a best practice document for operators pertaining to the donation of foods. The discussion was tabled until the next meeting.

Mr. Holbert gave a summary of the following changes from the FDA Food Code to the Ohio Uniform Food Safety Code that were recommended by RFSAC to be forwarded to Public Health Council, and the Directors of Agriculture and Health for adoption.

- 3717-1-01 (B)(28) Added definition of cut leafy greens:

"Cut leafy greens: means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

- 3717-1-01 (B)(122) Added cut leafy greens to the definition of TCS food.
- 3717-1-02.4 (C)(12) Requirements are added to improve food worker awareness of food allergen concerns in the food service and retail setting.
- 3717-1-03.3 (D) Provides a definition and criteria for the non-continuous cooking of foods comprised of raw animal products to address the safety of this cooking method.

FDA Changes the council recommended not to add to the Ohio Administrative Code:

- 3717-1-03.3 (A) (3) (b):

Restriction of serving comminuted hamburgers and other ground meats in an undercooked form upon a consumer's request is no longer an option for items offered on a children's menu.

- 3717-1-04.8 (J) Regarding rinsing after sanitizing food equipment, utensils etc.

The request for a post sanitizing rinse would be restricted to new machines and as part of a retrofitting kit. The USEPA has stated that a sanitizer cannot be rinsed off based on 40 CFR 180.940, which calls for adequate draining and contact time which leaves a certain amount of residual as a protectant. The label currently does not address rinsing off a hard surface after sanitizing. This likely will not be added to the Ohio Uniform Food Safety Code until EPA changes its regulations.

- 3717-1-05.1 (I) Restriction to disposal of mop water: "Toilets and urinals may not be used as service sink for the disposal of mop water and similar liquid waste."

The state agencies will be offering regional training on the updates once they are finalized.

2. Review of 3701-21-25 (Certification in Food Protection) – Jean Hayden

As of March 1, 2010 Level One Certification in Food Protection is mandated training for the person in charge per shift of a risk level I, II, III and IV FSOs or RFEs (this does not include mobiles, vending and temporaries) in the following instances:

- When a new FSO or RFE is licensed after March 1, 2010 unless the individual has successfully completed an equivalent or more comprehensive certification in food protection course (This would be Ohio Department of Health's Level 2)
- When a FSO or RFE has been implicated in a foodborne disease outbreak.
- When the licensor has documented a failure to maintain sanitary conditions.

Note: If an individual was working as a PIC prior to March 1, 2010 in a licensed FSO or RFE, he/she would not be required to obtain the level one training, unless they are now working at a facility that has been implicated in a foodborne disease outbreak or a documented failure to maintain sanitary conditions.

To offer a Level One Certification in Food Protection the course and provider must be approved by the Director of Health. We have two applications for the level one: the first is for the course material and the other is to become a provider. Both applications are located on the ODH website at our Food Safety page under Forms.

When submitting course materials for approval the curriculum must include a written or verbal exercise, and include at a minimum the following topics as it relates to foodborne illness risk factors: food sources, personal hygiene and handwashing, cross contamination, cleaning/sanitizing of equipment and utensils, and proper cooking, cooling, and holding of food. To be a provider you need to fill out the second application and provide a draft certificate along with any supporting documentation that the instructors meet the qualifications. For example if the instructor is not an RS then they need to have the Level Two Ohio Certification in Food Protection. Currently we have 41 different courses approved and 75 approved providers and 12 pending.

The level two training, which has been in place since 1973, is not mandated. For an agency or individual to offer a course for level two Ohio Certification they must apply to ODH using the application which is also located on our Forms page titled "application to conduct a level two certification in food protection course". The main supporting documentation to be submitted with the application will be the instructor qualifications. In most cases that documentation will be the length of time worked in the field (minimum of 4 years) and if they have completed the course that they are going to teach. The only time the course material would need to be submitted is if the material does not have prior approval. We currently have 367 approved providers, and within the last 10 years have certified almost 48,000 individuals. A list of the providers is on our Food Safety web page under Ohio Certification.

3. Charging penalty/late fees for temporary licenses – Jamie Higley

A late fee cannot be charged to a temporary food service operation for failure to obtain a license prior to operating, because the Ohio Revised Code 3717.43 (D) states that a late fee is for license renewal only. A temporary food service operation license is not renewable. 3701-21-02.1 (B) of the Administrative Code also restricts the fees that a local health department may charge to license fees, facility layout, collection and bacteriological examination of samples, and attendance at a course of study offered by the licensor.

If a new facility refuses to obtain a license, enforcement action by the prosecutor may be pursued, and no late/penalty fee can be charged.

4. Issuing temporary licenses in a private home – Doug Pollitt

A food service operation may not be conducted out of a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters as stated in part of rule 3717-1-06.1 (S) of the Administrative Code. A temporary food service operation license may be issued for an operation outside of the home. Food prepared in a private home cannot be served in a licensed temporary food service operation.

5. People impersonating state health inspectors – Jamie Higley

The following press release was issued by the Ohio Department of Health on April 15, 2011 regarding individuals claiming to be state health inspectors:

The Ohio Department of Health (ODH) today is reminding Ohio food service operators to be suspicious of individuals calling or entering establishments claiming to be state health inspectors.

"I want to remind Ohio's restaurants and food service establishments not to give out any personal, private, or secure information to anyone without first confirming the person's identity, said ODH Director Ted Wymyslo, M.D. "Employees from the ODH Food safety program will never come into an establishment alone to conduct an inspection, they will always be with local inspectors."

Over the past few weeks, the ODH Food Safety Program has received numerous phone calls from local health departments and restaurants across the state indicating that people claiming to be state health inspectors are contacting food service operators throughout Ohio. In some instances, these individuals request to schedule an inspection of the food service operation. In other instances, individuals have entered establishments trying to collect business and personal information.

“ODH food safety staff will never ask food service operators for credit card, personal or financial information,” Dr. Wymyslo added.

In Ohio, local health departments license and inspect food service establishments. Local inspectors typically will not schedule any inspections in advance or call to request an inspection. Food service operators with questions about the inspection process should contact their local health department.

For more information on the ODH food safety program or Ohio’s food safety rules visit: <http://www.odh.ohio.gov/odhPrograms/eh/foods/food2.aspx>

6. Update on Wendy's cheese variance – Larry Holbert

The variance is currently being reviewed by the Ohio Department of Health’s Office of General Counsel, then the variance must be approved by the Director of Health. The proposed agreement does not allow for the cheese slices to be cooled, stored refrigerated overnight and returned to service the following day.

7. Use of outdoor grills at an FSO – Doug Pollitt

Doug discussed the following document regarding Outdoor Grilling:

It is the time of the year for individuals and licensed food services to set up outdoor grilling operations throughout the state. This is an attempt to set forth several guidelines that will enable local health departments to properly license such an operation.

For clarification purposes this notice does not apply to catering, mobile, or temporary food service operations, however some of these operations could be considered as licensing options.

When considering licensing of an outdoor grilling operation, it is recommended that you check with the building, fire, and zoning officials in your jurisdiction. This needs to be done to assure that such operations would not be prohibited by these agencies.

You should consider the following Ohio food service law and rules references listed below:

The Ohio Administrative Code (OAC) section 3701-21-01 (I) states, “Food Service Operation” means an operation defined in 3717.01 of the Revised Code. Two or more food serving areas ,each supplied by separate kitchens, are considered two or more separate food service operations and must be licensed individually even through located in the same building or structure.”

The Ohio Revised Code (ORC) section 3717.43 (F) states in part, "The licensor may place restrictions or conditions on a food service operation limiting the types of food that may be prepared or served by the food service operation based on the equipment or the facilities of the food service operation..."

OAC section 3701-21-03 Facility layout and equipment specifications states in part "No person, firm,...shall construct, install, provide, equip, or extensively alter a food service operation until facility layout and equipment specifications have been submitted to and approved in writing by the licensor ..."

OAC section 3717-1-09 (B) states in part "food equipment that is acceptable for use in a food service operation...shall be approved as specified under rule 3717-1-04.1 (KK) of the Administrative Code.

OAC section 3717-1-04.1 (KK) (1) states in part "food equipment that is acceptable for use in a food service operation...shall be approved by a recognized food equipment testing agency."

OAC section 3717-1- 04.1 (KK) (2) states in part "...the Ohio Department of Health or the licensor may approve the use of food equipment ...if the equipment demonstrates compliance..."

The complexity of the grilling operation will determine if it should be licensed separately from an existing operation. In some instances the grilling operation could be considered as an extension of the existing licensed operation and no additional licensing would be required. The scope and frequency of support from the existing operation should be determined at the time of plan review and based on the type of menu, the number of anticipated customers, and the frequency of use of the outdoor cooking operation. The more dependent the outdoor grilling operation on the existing food service the less equipment would be needed at the grilling area. If the outdoor operation is independent of the existing operation then additional licensing should be considered based on the definition in the OAC as referenced above. For example, if the operation is washing utensils, storing, preparing, cooking, holding or serving food and the payment is made for the food at the outdoor location, it should be considered as a separate operation and licensed as such. It is important that each operation be evaluated individually when determining approval and/or licensing determination.

Your professional judgment is of the utmost importance to assure that a fair and equitable decision is reached.

Listed below are additional factors that must be considered when evaluating outdoor grilling operations for approval and/or licensing.

- Adequate access to utilities at the outdoor site.
- Equipment used for the food service operation including the grill, should be approved by a recognized testing agency. An approved cover should also be provided for the grill;
- The grill should be located on a smooth, easily cleanable surface.

- If there is cooking only at the outdoor site, walls may not be required at the outdoor site. If there is any food preparation, service, storage, and/or holding, examples for adequate protection may include tents with sides, screening, air curtains, vermin resistant containers etc.
- Overhead protection including tent or canopy, awning, table type umbrella, or a permanent structure. Keep in mind that the fire jurisdiction under most circumstances will not permit open grilling under a tent structure. Therefore a grill outside (i.e. adjacent) to the tent with a cover may be an alternative.
- If the operation is limited, type of flooring for consideration includes, if graded to drain, concrete, or machine laid concrete;
- Hot/cold storage and holding facilities for food products;
- Provisions provided for in use storage of equipment and utensils;
- Foods stored outside during cooking, preparation if applicable, or service must be protected from contamination by use of covered vermin resistant containers;
- If handling and preparing food in the grill area; food and non-food contact surface areas must be smooth and easily cleanable;
- Facilities for hand washing, including hot and cold running water under pressure with soap, towels, and a waste basket, available;
- Storage for in use wiping cloths;
- Provisions for the cleaning of equipment and utensils;
- A probe thermometer to determine that the required food temperatures are being attained;
- Lighting facilities; the time of operation may be considered and limitations placed on the license.
- Facilities for the storage of the grill when not in use, to protect it from contamination (ex: weather, rodents, vermin, etc.),
- Provisions for the proper disposal of waste water and waste products.

This list should not be construed as all inclusive. The complexity of the outdoor grilling operation will determine which of the above and quite possibly other factors should be considered when approving such an operation.

If you have additional questions please contact the Ohio Department of Health, Bureau of Environmental Health, Food Safety Program at 614-466-1390.

8. Licensing of hotels/motels breakfast – Larry Holbert

The serving of food by hotels/motels, including the breakfast with the room, has been addressed in many health jurisdictions throughout the state. In every case the

local legal representatives and ODH legal staff have agreed that those operations are amenable to Chapter 3717 of the Ohio Revised Code, and are required to be licensed as food service operations.

Ohio Revised Code 3717.01 states in part that a food service operation means a place, location, site or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. The meals that the food hotel/motels offer are intended primarily for paying guests, and it is our opinion that these types of operations are licensable as a food service operation. Prior to 1999 these types of operations serving a continental breakfast were exempt from obtaining a food service operation license. This has led to confusion regarding licensing status.

9. Update on Cost Methodology Training being Scheduled – Jean Hayden

ODH is currently working with the Ohio Department of Agriculture on the updates and will be scheduling regional training in June through August.

10. NEHA Free Epi Course – Jamie Higley

NEHA is offering a free Epi-Ready Team Training workshop in Columbus, OH on June 16-17. Interested participants can go to the NEHA website at www.neha2011aec.org, click on “register now” and follow the prompts as directed to sign up for the workshop. There is no registration fee to attend this workshop.

11. Updates to ODH website/LHD fee schedules – Jean Hayden

The Ohio Department of Health Food Safety Program has added a Current Events page to the Food Safety page on the ODH website. The page can be found at <http://www.odh.ohio.gov/odhPrograms/eh/foods/foodevents.aspx>. Included on this page will be the minutes from the food safety conference calls, upcoming events such as trainings, and other current news. The Current Events page is available now, but we are still in the process of adding information.

We also would like to post LHD fee schedules on this site until the Food share point site is available. Please e-mail your current fee schedules to jean.hayden@odh.ohio.gov.